

**ALLEGED SHIPMENT:** On or about March 19 and April 12, 1945, from the State of Indiana into the State of Illinois. Accompanying the products were form letters bearing the heading "Good Morning," circulars entitled "Are You Suffering From Mineral Starvation," and leaflets entitled "Cause and Results," "Prostate Glands," "Testimonials for Nature's Minerals Rheumatism," and "Abundant Health."

Analysis showed that the Nature's Minerals Compound consisted essentially of compounds of calcium, sodium, iron, and magnesium, and sulfates, phosphates, chlorides, carbonates, free sulfur, and a trace of iodides. The High Potency Vitamin B Complex tablets contained thiamine chloride, nicotinic acid, and riboflavin.

**NATURE OF CHARGE:** Misbranding, Section 403 (a), the labeling of the products contained false and misleading representations regarding their efficacy in the treatment of various disease conditions and other abnormalities. The charges under Section 403 (a), which were based on these claims, were identical with the charges under Section 502 (a), as reported in notices of judgment on drugs and devices, No. 2336. In addition to the misbranding charges applicable to both products, the High Potency Vitamin B Complex tablets was further misbranded under Section 403 (a), in that the statement "High Potency Vitamin B Complex" borne on the label was false and misleading, since the product did not consist of high potency vitamin B complex, but would supply only the minimum adult daily requirement of Vitamin B<sub>1</sub>, and smaller proportions of the other vitamins of the B complex.

**DISPOSITION:** December 5, 1946. Pleas of guilty having been entered, the partnership was fined \$500 and the individual defendant \$100.

**13484. Adulteration and misbranding of Berko Vigortone. U. S. v. Beacon Packing Corp. Plea of guilty. Fine, \$300. (F. D. C. No. 12582. Sample No. 21937-F.)**

**INFORMATION FILED:** February 26, 1945, against the Beacon Packing Corp., Brooklyn, N. Y.

**ALLEGED SHIPMENT:** On or about September 17, 1943, from the State of New York into the State of Pennsylvania.

**LABEL, IN PART:** "Berko Vigortone \* \* \* Manufactured by Berko Malted Milk Co., Inc., Brooklyn, N. Y."

**NATURE OF CHARGE:** Adulteration, Section 402 (b) (1), vitamin A, a valuable constituent of the article had been in whole or in part omitted therefrom. The product was represented to contain 1,000 U. S. P. units of vitamin A per ounce, but contained a smaller amount.

Misbranding, Section 403 (a), the name "Vigortone" on the labels was misleading, in that it represented and suggested that the article possessed peculiar tonic and invigorative properties, whereas it did not possess such properties; the labeling was further misleading in that the statements "Vitamin B<sub>2</sub>G" and "Vitamin B<sub>2</sub>" represented and suggested that the article contained an amount of vitamin B<sub>2</sub> (G) sufficient to make an important contribution to the nutritional needs of the body for this substance, whereas it contained only a negligible amount of the vitamin, which fact was material in the light of the aforesaid statements. The statements on the jar label, "Each Ounce Contains approximately the following active ingredients: Vitamin A 1,000 U. S. P. Units," were false and misleading, since the article contained less than 1,000 U. S. P. units of vitamin A per ounce, namely, less than 250 U. S. P. units of vitamin A per ounce.

Misbranding, Section 403 (j), the article purported to be, and was represented, for special dietary uses by man by reason of its vitamin and mineral properties with respect to vitamins A, B<sub>1</sub>, B<sub>2</sub>, and D, and calcium, phosphorus, and iron; and its label failed to bear such information concerning its vitamin and mineral properties as has been prescribed by the regulations as necessary in order fully to inform purchasers as to its value for such uses, since its label failed to bear a statement of the proportion of the minimum daily requirements for the aforesaid vitamins and minerals which would be supplied by the article when consumed in a specified quantity during the period of one day, which quantity is the amount customarily or usually consumed during a period of one day or a quantity reasonably suitable for consumption in that period.

**DISPOSITION:** The defendant filed a motion to dismiss this action and also the action against the Berko Malted Milk Co., Inc., reported in the following notice of judgment, No. 13485, on the grounds (1) that the informations did not state facts sufficient to constitute an offense against the United States and (2) that prosecution was prohibited by Section 703 of the law (21 U. S. C. A. 373). The defendant alleged that the issues involved in both informations were identical, except that the Berko Malted Milk Co., Inc., was the manufacturer of the product and the Beacon Packing Corp. was the distributor. The defendant argued in support of its motion that all evidence obtained against the defendant was procured as a result of inspection and examination of the corporation's books and papers by inspectors of the Federal Security Administrator, and that the inspectors made copies of such records "showing the movement in interstate commerce" of the product.

On November 13, 1946, the court denied the defendant's motion to dismiss, and ruled as follows:

The Beacon Packing Corporation is not a carrier; it is not a person "receiving food, drugs \* \* \* in interstate commerce" or a holder thereof, within the purview of the statute (21 U. S. C. A. 373), if the latter is presently understood.

Such carrier, or good faith purchaser, or consignee of the manufacturer, could not be the object of a prosecution for violation of the law by suffering the use of its own records against it. That is all.

The Beacon Packing Corporation is not shown to be entitled to the immunity which might attach to it, if it were such a purchaser or consignee.

The Information is sufficient in form. Motion denied.

On May 22, 1947, a plea of guilty having been entered on behalf of the defendant, the court imposed a fine of \$150 on each of the 2 counts of the information.

**13485. Adulteration and misbranding of Berko Vigortone. U. S. v. Berko Malted Milk Co., Inc. Plea of guilty. Fine, \$200. (F. D. C. No. 12583. Sample No. 76307-F.)**

**INFORMATION FILED:** February 26, 1945, against Berko Malted Milk Co., Inc., of Brooklyn, N. Y.

**ALLEGED SHIPMENT:** On or about December 29, 1943, from the State of New York into the State of New Jersey.

**LABEL, IN PART:** "Berko Vigortone Vitamins Chocolate Flavored Vitamins \* \* \* B<sub>2</sub>G Each ounce contains approximately the following active ingredients: Vitamin A 1000 U. S. P. Units Vitamin B<sub>1</sub> 250 International Units Vitamin B<sub>2</sub> 200 Gamma Units Vitamin D 400 U. S. P. Units."

**NATURE OF CHARGE:** Adulteration, Section 402 (b) (1), valuable constituents of the article, calcium, phosphorus, and iron, had been in whole or in part omitted therefrom. Each ounce of the article was represented to contain 0.294 gram of calcium, 0.182 gram of phosphorus, and 0.016 gram of iron, but in fact contained not more than 0.091 gram of calcium, not more than 0.125 gram of phosphorus, and not more than 0.0014 gram of iron.

Misbranding, Section 403 (a), the name "Vigortone" was misleading, since it created the impression that the product possessed peculiar tonic and invigorating properties, whereas it did not. The labeling was further misleading, since the statements Vitamins "B<sub>2</sub>G and Vitamin B<sub>2</sub>" on the label created the impression that the article contained an amount of vitamin B<sub>2</sub>(G) which would contribute in an important respect to the requirements of the body for that vitamin. The product contained a negligible and unimportant amount of vitamin B<sub>2</sub>(G), which fact is material in the light of the statements borne on the jar label wherein these statements "Each Ounce Contains approximately the following ingredients: \* \* \* Calcium 0.294 grams, Phosphorus 0.182 grams, Iron 0.016 grams" were false and misleading, since the article contained smaller amounts of calcium, phosphorus, and iron than so represented.

Section 403 (j), the article purported to be, and was represented, for special dietary uses by man by reason of its vitamin properties with respect to vitamins A, B<sub>1</sub>, B<sub>2</sub>, and D, and its mineral properties with respect to calcium, phosphorus, and iron; and its label failed to bear such information concerning its vitamin and mineral properties as has been determined to be, and by regulations prescribed as, necessary in order fully to inform purchasers as to its value for such uses. The label also failed to bear a statement of the proportion of the minimum daily requirements for vitamins A, B<sub>1</sub>, B<sub>2</sub>, and D, and the